

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THE STATE OF TEXAS, et al.,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Civil Action No. 4:20-cv-00957-SDJ

EXHIBIT 5

**PLAINTIFF STATES' OPENING BRIEF TO THE SPECIAL MASTER
FOR THE MARCH 21, 2024 HEARING**



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HIGHLY CONFIDENTIAL

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February 16, 2024

Re: *State of Texas et al. v. Google LLC*, No. 4:20-cv-957-SDJ (E.D. Tex.)

Counsel:

We write in response to your January 16 letter requesting additional source code.

As you know, Google has made available for inspection approximately 80 gigabytes of source code since July 2023. Without first meeting and conferring with Google, Plaintiffs represented to the Court on December 7, 2023 that there were gaps in the code provided, but you provided no details to Google. On January 16, 2024, you identified, for the first time, the gaps that you contend exist in Google's source code production.

At our meet and confer on February 6, we told you that we were cautiously optimistic that we would be able to make additional code available to address some, but likely not all, of Plaintiffs' requests. At our meet and confer on February 12, we told you that the approvals process for making additional code available was progressing quickly. On February 16, you filed a motion to compel with the Special Master asserting that the parties were at impasse as to source code.

Google has reviewed your belated requests for additional source code, files and directories, and experiment data files. We understand that Plaintiffs are seeking: (1) source code for the initial Bernanke implementation; (2) source code for Project Bell, including code to "execute Project Bell"; (3) additional files and directories described at pages 4-5 of your January 16 letter; and (4) what you characterize as "experiment files used by the Bernanke code."

Google's Agreement to Provide Additional Source Code

February 16, 2024

Page 3

([REDACTED]) listed on pages 4-5 of their January 16 letter. As noted above, Google is optimistic about being able to produce additional code from [REDACTED]. That internal process is ongoing.

- o The [REDACTED] includes [REDACTED] lines of code. Google will produce the file (and the associated files) from [REDACTED]. This will capture the files from the “[REDACTED]” folder that Plaintiffs specifically requested on page 5 of their January 16 letter.
- o The [REDACTED] includes almost [REDACTED] lines of code. Google will produce the [REDACTED] directory, which Plaintiffs specifically requested on page 5 of their January 16 letter.
- o The [REDACTED] includes more than [REDACTED] lines of code. Google will produce the files and code in [REDACTED]. This will capture the files in “[REDACTED]” that Plaintiffs specifically requested on page 5 of their January 16 letter.

Google does not agree to produce additional materials in response to Plaintiffs’ remaining belated requests for the following reasons:

Bell. With respect to Plaintiffs’ second request (code for Project Bell), Plaintiffs’ request is based on the misapprehension that Google “has not produced any code or documents for Project Bell.” Google has reviewed the productions made to date and has determined in good faith that Plaintiffs already have access to the source code for Project Bell, including code to “execute Project Bell.” Moreover, Plaintiffs’ assertion that Google has not produced any documents for Project Bell is obviously wrong because Google has produced 22,948 documents that hit on the term “Bernanke” or “Project Bell”.

Bernanke experiment files. Plaintiffs’ request for SSTables and “experiment code files” used by the Bernanke code to “load values for various bid adjustments” is not a request for source code but is instead a request for raw underlying data files. Google has already provided the source code (including experiment code) that [REDACTED]. The files that Plaintiffs are requesting would not provide additional information regarding how Bernanke works, adjusts bids, or calculates multipliers. Google does not agree to undergo the burdensome, cumulative, and duplicative exercise of collecting historical raw data when Plaintiffs already have access to the more relevant source code.

We remain available to meet and confer.

Sincerely,

/s/ Robert J. McCallum
Robert J. McCallum

Appendix 1

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]